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# UC DAVIS

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## LAW REVIEW

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### LECTURE

## What Would Be the Story of Alice and Leonard Rhinelanders Today?

Angela Onwuachi-Willig\*

*On November 8, 2011, I presented this lecture as part of the annual Brigitte M. Bodenheimer Family Law Lecture Series at the University of California, Davis School of Law. I extend sincere thanks to the Bodenheimer family for endowing this special lecture. I feel honored to be a small part of this wonderful lecture series in family law. I feel particularly grateful because the University of California, Davis School of Law was my “birthplace” as a professor. Dean Rex Perschbacher, then-Associate Dean Kevin Johnson, and the law school faculty welcomed me into academia by giving me my first job as a tenure-track law professor and serving as fantastic mentors to me along the way.<sup>1</sup> I did not have the*

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\* Copyright © 2013 Angela Onwuachi-Willig. Charles M. and Marion J. Kierscht Professor of Law, University of Iowa. J.D., University of Michigan Law School; B.A., Grinnell College. [angela-onwuachi@uiowa.edu](mailto:angela-onwuachi@uiowa.edu). Thanks to Dean Gail Agrawal and Charles M. and Marion J. Kierscht for their support. I also give special thanks to my husband, Jacob Willig-Onwuachi, and our children, Elijah, Bethany, and Solomon for their constant love and support.

<sup>1</sup> So many people at the University of California, Davis School of Law have played

honor of knowing Professor Bodenheimer, but I was very fortunate to be a part of her legacy at the law school in two important ways. First, I followed in the footsteps of Professor Bodenheimer, who was the first tenured woman law professor at the University of California, Davis School of Law, when I joined the faculty as one of its many female law professors.<sup>2</sup> I also was lucky to be a part of Professor Bodenheimer’s legacy at the law school by following her and Professor Carol Bruch as the institution’s family law professor. This Essay is based on materials from my forthcoming book *ACCORDING TO OUR HEARTS: RHINELANDER V. RHINELANDER AND THE LAW OF THE MULTIRACIAL FAMILY* (Yale University Press 2013). It explores both how far we have travelled and how little we have travelled in terms of equality and interracial intimacy since the stunning annulment trial of Alice and Leonard Rhinelanders in 1925.

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an incredibly important role in my development as a scholar, teacher, and citizen in academia. This list of individuals is endless, as every single faculty member was a great mentor and friend to me, but I especially am grateful for the advice and counsel of Dean Kevin Johnson, Dean Emeritus Rex Perschbacher, Justice Cruz Reynoso, Associate Executive Vice Chancellor Rahim Reed, Senior Assistant Dean Hollis Kulwin, Assistant Dean of Admission and Enrollment Sharon Pinkney, and Professors Andrea Bjorklund, Alan Brownstein, Anupam Chander, Joel Dobris, Chris Elemendorf, Bill Hing, Lisa Ikemoto, Margaret Johns, Tom Joo, Evelyn Lewis, Al Lin, Madhavi Sunder, Marty West, and Cappy White. I also want to thank everyone who worked so hard to make this event happen, especially Associate Dean Vik Amar, Professor Courtney Joslin, Madeleine Fischer, Gia Hellwig, and Donarae Reynolds.

<sup>2</sup> See Herma Hill Kay, *UC’s Women Law Faculty*, 36 UC DAVIS L. REV. 331, 352, 355 (2003) (stating that Professor Bodenheimer “achieved the security of a full-time tenured professorship at Davis” in 1972).

My lecture today comes from my book project, *According to Our Hearts: Rhinelander v. Rhinelander and the Law of the Multiracial Family*, which will be published by Yale University Press in 2013. *According to Our Hearts* consists of two parts. The first part of the book tells the love story of Alice and Leonard Rhinelander, which began in 1921, and their trial in November of 1925.<sup>3</sup> Thereafter, the second part of the book uses the annulment lawsuit, *Rhinelander v. Rhinelander*, from 1924 and its resulting trial in 1925 as springboards for examining how law and society have functioned together to frame the normative ideal of family as monoracial. Specifically, it explores how law and social norms have worked to define the ideal of family as monoracial: (1) by failing to account for the existence of multiracial families; and (2) by punishing those who are part of multiracial family units. In so doing, it discredits the myth that interracial, heterosexual couples no longer experience legally facilitated discrimination against them in a post-*Loving v. Virginia* era.

In examining the insights that *Rhinelander* provides into the law's past and continuing role in defining the normative ideal of family as monoracial, I focus my attention on black-white heterosexual couples — those heterosexual couples that racially identify in the same way that Alice and Leonard were ultimately viewed by their jury and the public.<sup>4</sup> In this lecture, I just set the stage for a larger discussion about law and society's joint role in framing the monoracial ideal of family. I accomplish this task by providing background information about how reactions and perceptions of multiracial couples may differ based upon the races and the genders of those involved in the relationships. Specifically, I briefly detail historical and contemporary perceptions about black-white marriages within the United States and compare such perspectives to contemporary views concerning other types of interracial marriage. As I reveal in my lecture, black-white couples are the interracial couples that most severely lag behind others in the United States in terms of their actual raw numbers and percentages.<sup>5</sup>

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<sup>3</sup> *Rhinelander v. Rhinelander*, 219 N.Y.S. 548 (N.Y. App. Div. 1927) [hereinafter Court Record].

<sup>4</sup> In my book, although I address how the normative ideal of family is also defined as being rooted in heterosexuality, I generally focus my analyses on black-white, heterosexual couples. I readily acknowledge the widespread exclusion of gay and lesbian couples and their children from normative definitions of family. What I wanted to do with this book was ask the kinds of questions that often do not get posed about multiracial couples and families and, more broadly speaking in the book, unpack widely held assumptions about how law adequately protects interracial, heterosexual couples in a post-*Loving* era.

<sup>5</sup> See Randall Kennedy, *How Are We Doing With Loving?: Race, Law, and*

Thereafter, I analyze how perceptions about black-white marriage become even more complicated when one examines the gendered dimensions of black-white intimacy. After all, the most prominent historical image of interracial intimacy in the United States is Mildred and Richard Loving, a black female-white male married couple who fought for and won national legal recognition for all interracial marriages in a case aptly called *Loving v. Virginia*; however, the racial and gender make-up of the Lovings is rarely reflected among today's interracial couples.<sup>6</sup> In fact, black women and white men are among the least likely individuals to marry each other in the United States. Such gendered dimensions of interracial intimacy become even more startling when one considers the past treatment of relationships and marriages between black men and white women, relationships that historically have been viewed as more threatening and as more deserving of harsh punishments than other types of interracial unions, including those of black women and white men.<sup>7</sup>

#### I. TRAGIC LOVE: THE STORY OF ALICE AND LEONARD RHINELANDER

In the early twentieth century, Alice Beatrice (Jones) Rhineland and Leonard Kip Rhineland became the stars of a real-life, dramatic love story, one that played itself out on the front pages of newspapers

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*Intermarriage*, 77 B.U. L. REV. 815, 820 (1997). More than 93% of Whites and Blacks marry intraracially, while only 70% of Asians and Latinos and fewer than 33% of Native Americans marry intraracially. See RACHEL F. MORAN, *INTERRACIAL INTIMACY: THE REGULATION OF RACE & ROMANCE* 6, 103 (2001); see also RANDALL KENNEDY, *INTERRACIAL INTIMACIES: SEX, MARRIAGE, IDENTITY, AND ADOPTION* 127 (2003).

<sup>6</sup> *Loving v. Virginia*, 388 U.S. 1, 11-12 (1967). In *Loving*, the U.S. Supreme Court struck down Virginia statutes that prohibited and criminalized marriage between Whites and non-Whites, holding that such anti-miscegenation statutes violated both the Equal Protection and Due Process Clauses of the U.S. Constitution. *Id.* at 11-12.

<sup>7</sup> CHARLES FRANK ROBINSON II, *DANGEROUS LIAISONS: SEX AND LOVE IN THE SEGREGATED SOUTH* 67-70 (2003); Reginald Oh, *Regulating White Desire*, 2007 WIS. L. REV. 463, 482-85 (2007); see also Ariela R. Dubler, *From McLaughlin v. Florida to Lawrence v. Texas: Sexual Freedom and the Road to Marriage*, 106 COLUM. L. REV. 1165, 1176 (2006) ("To be sure, as Martha Hodes has documented, there were always black men having sex with white women, but this coupling inspired far more cultural anxiety. In particular, Hodes documents that white alarm about sex between white women and black men increased dramatically in the years following the Civil War. In the post-Reconstruction South, images of 'the purity of white women' rested on complementary images of 'black men as bestial.'"); cf. Kevin R. Johnson, *The Legacy of Jim Crow: The Enduring Taboo of Black-White Romance*, 84 TEX. L. REV. 739 (2006) [hereinafter Johnson, *Legacy*] (exploring the persistence of social disfavor for black-white relationships and the continued portrayal of African-American men as stereotypical criminals and hypersexual beings as two examples of the taboo against black-white intimate relationships).

across the entire country. For over a year, and particularly during their month-long trial in 1925, Alice and Leonard Rhinelanders captured the full attention of the American public.

Alice Beatrice Jones was a working-class woman, who met Leonard Kip Rhinelanders, a wealthy white male descendant of the Huguenots and heir to millions of dollars, in the fall of 1921. Leonard and Alice quickly fell in love. Their love for each other grew over a three-year period, including a lengthy period of long distance separation when Leonard's father, Philip Rhinelanders, sent him away with chaperones to places like Atlantic City, Cuba, Bermuda, San Francisco, and Washington, D.C.<sup>8</sup> Despite the distance and time apart, Alice and Leonard maintained their relationship, and on October 14, 1924, they were married by New Rochelle mayor Harry Scott.<sup>9</sup> However, unlike most weddings involving a member of New York high society, there was no prominent announcement of their wedding. There was no larger-than-life celebration of their union. Instead, Alice and Leonard tried to keep their marriage a secret. Additionally, Alice and Leonard did not buy a luxurious house to live in, even though Leonard certainly had the money to buy one. Instead, they began their new life together in the very modest home of Alice's parents, British immigrants George Jones, a "colored" man, and Elizabeth Jones, his white wife.

But, despite the Rhinelanders' best efforts to hide their marriage, their secret was exposed. On November 13, 1924, the *Standard Star* of New Rochelle ran a story with the title "Rhinelanders' Son Marries Daughter of a Colored Man."<sup>10</sup> Thereafter, reporters sped to the house of the Joneses and the Rhinelanders newlyweds in an attempt to uncover the mystery of Alice's race and the cross-class marriage of a member of one of New York's most elite families.

Just two weeks later, on November 26, 1924, Leonard filed for annulment of his marriage to Alice. He argued that Alice had lied to him about her race. Leonard claimed that Alice had committed fraud that made their marriage void by telling him that she was white and by failing to inform him that she was of "colored blood."<sup>11</sup>

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<sup>8</sup> See Court Record, *supra* note 3, at 160-62 (direct examination of Leonard Kip Rhinelanders).

<sup>9</sup> See *id.* at 171 (direct examination of Leonard Kip Rhinelanders).

<sup>10</sup> EARL LEWIS & HEIDI ARDIZZONE, LOVE ON TRIAL: AN AMERICAN SCANDAL IN BLACK AND WHITE 10-11 (2001); see also Court Record, *supra* note 3, at 172-73 (direct examination of Leonard Kip Rhinelanders).

<sup>11</sup> ANGELA ONWUACHI-WILLIG, ACCORDING TO OUR HEARTS: RHINELANDER V. RHINELANDER AND THE LAW OF THE MULTIRACIAL FAMILY (forthcoming 2013) (first pageproofs at 3, 30-31) (on file with the author).

According to legend, though, Leonard and Alice were actually madly in love and Leonard filed the lawsuit only because his father refused to accept their marriage. The story was that Leonard told Alice to fight the case to ensure that they could be together as husband and wife.<sup>12</sup> In 1920s New York, what did that mean socially? New York did not have a law that prohibited interracial marriages,<sup>13</sup> so technically the law did not require the two lovers to separate. Socially, however, Alice and Leonard could not be together unless she was also white. So naturally, everyone expected Alice to litigate her whiteness<sup>14</sup> — to try to prove that she was in fact white; however, Alice surprised everyone when she did not attempt to prove her whiteness. Instead, she admitted that she was of colored descent and argued that Leonard was aware of her race before the marriage.<sup>15</sup>

This strategic choice by Alice's defense team essentially meant the end of the Rhinelanders as husband and wife. If Leonard won, as annulment required, the Rhinelander marriage would forever be erased from the books, as though it had never occurred. If Alice won at trial, which, at the time, seemed impossible given the vast differences in both their class and race statures, Alice could never live with Leonard again as his wife. Socially speaking, a woman like Alice — poor and non-white — could never be the wife of the wealthy, prominent, and white Leonard Rhinelander.

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<sup>12</sup> The Jones's family attorney, Judge Samuel Swinburne, indicated that Leonard had sent Alice the following note: "Honey Bunch, old scout-I hope you will win this case. Get the best lawyer." *Rhinelanders Bride Fears He Is Captive*, N.Y. TIMES, Nov. 30, 1924, at 14 [hereinafter *Captive*]. The note was unsigned, but Alice recognized Leonard's handwriting. See *id.*; see also *Poor Girl to Fight Hubby's Parents*, CHI. DEFENDER, Dec. 6, 1924, at 1 (emphasis added) [hereinafter *Poor Girl*]. ("Despite the filing of the annulment the young millionaire has informed his wife to have courage and believe in him. . . . [Leonard Rhinelander] informed her to fight the case to the end. He advised her to get the best lawyer obtainable."). According to Alice, Leonard told her, "[T]here is but one thing that can separate us, and that is — death." *Rhinelanders Bride Flays N.Y. Society*, CHI. DEFENDER, Mar. 21, 1925, at 1 [hereinafter *Rhinelanders Bride*].

<sup>13</sup> See Court Record, *supra* note 3, at 1182 (Summation for the Defendant) ("In this great state of New York there is no law against a negro marrying a white.").

<sup>14</sup> This term is borrowed from the work of Ariela Gross, Professor of Law and History at the University of Southern California. See Ariela J. Gross, *Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South*, 108 YALE L.J. 109, 118-21 (1998) (analyzing a broad range of cases in which the race of an individual was litigated).

<sup>15</sup> See Court Record, *supra* note 3, at 1311-12 (Summation for Plaintiff); *Kip's Burning Love Notes Bared*, THE AFRO-AMERICAN, Nov. 14, 1925, at 1 [hereinafter *Kip's Burning Love Notes*] ("The great Rhinelander cohorts were flabbergasted Tuesday when Mrs. Kip suddenly admitted that colored blood courses in her veins.").

The trial of the Rhinelanders proved to be shocking on many fronts. It involved racy love letters, tales of pre-marital lust and sex, and the exhibition of Alice's breasts, legs, and arms in the courtroom to prove that Leonard, who had seen her naked before marriage, would have known that she was colored at the time of their nuptials.

What was most scandalous about the *Rhinelanders* case, however, was the trial's end. The jury returned a verdict for Alice, determining that Leonard knew her racial background before marriage yet married her anyway. As Professors Earl Lewis and Heidi Ardizzone explained in their book *Love on Trial: An American Scandal in Black and White*, "few had believed a white jury capable of such an unbiased finding."<sup>16</sup> Before the trial had begun, there was a "reported 5 to 1 betting odds among townsmen and spectators that Rhinelanders would win an annulment."<sup>17</sup> In fact, after the jury announced its verdict for Alice, people expressed disappointment with the decision. For example, the wife of a juror named Fred Sanford expressed her disapproval of the verdict; she asserted, "Leonard Rhinelanders should have been granted an annulment. It isn't right for a man of his standing to be tied to a girl with colored blood."<sup>18</sup> Moreover, one juror admitted that the verdict in Alice's favor was not in line with the hearts of the jurors. As this juror, Henry M. Weil, explained to the public after the trial: "If we had voted according to our hearts [the title of my book] the verdict might have been different."<sup>19</sup> In other words, if they had followed their hearts, Leonard would have won instead.

Several years later, the Rhinelanders marriage officially ended by divorce in Las Vegas. Life after the trial proved to be sad for both Alice and Leonard in many ways. Upon divorce, Leonard became a social recluse. Even before the trial began, Leonard had begun to experience exclusion from "clubs" to which he had previously belonged. Critically, he was removed from the *New York Social Register*, a marker of membership in one of New York's most elite families. The *Detroit Free Press* reported: "Kip stands outside the fold the symbol of a proud family's shame. Kip now stands on a social register par with his Negro bride, who last spring sailed into the March supplement of the register

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<sup>16</sup> LEWIS & ARDIZZONE, *supra* note 10, at 231.

<sup>17</sup> *Id.* at 225.

<sup>18</sup> *Id.* at 223 (quoting the wife of juror Fred Sanford in a Dec. 6, 1925 *New York World* article).

<sup>19</sup> *Rhinelanders Loses; No Fraud Is Found; Wife Will Sue Now*, N.Y. TIMES, Dec. 6, 1925, at 1.



for one fleeting cruise under her husband's colors, but was dropped overboard in the next edition."<sup>20</sup>

In addition to social exclusion, Leonard was essentially disinherited by his family for several years until he finalized his divorce from Alice. He was not allowed to join in the family business or participate in carrying on the family name and traditions through his employment until he ended any and all connections to Alice. In the end, Leonard never recaptured the life he had before Alice and certainly not the type of life he had with Alice. He died at the young age of thirty-four in February of 1936 without ever falling in love again and without remarrying.<sup>21</sup>

Alice, on the other hand, lived until she was eighty-nine years old, but to use the word "lived" may be an exaggeration. For the rest of her life, Alice survived on a substantial (for that time) settlement that she received from the Rhinelander family under the divorce settlement. Her settlement was \$31,500 — the equivalent of \$413,269.20 in 2013 — and an annual annuity of \$3,600.<sup>22</sup> Though surrounded by her family members, Alice remained alone in love. She never partnered with another man. In 1989, when Alice passed away, she left us with one last reminder of just how she really "died" more than sixty years earlier in 1925 at her infamous trial's end: she buried herself with a headstone that read "Alice J. Rhinelander."<sup>23</sup>

For me, the Rhinelanders' story represents so many different kinds of stories. On the one hand, it is a sad, love story — the story of two lovers who were torn apart because of racism and classism. On the other hand, it is a racial victory. After all, no one really expected that Alice would win. Yet, she won. In fact, many white people did not even want her to win. Recall again that Henry Weil, one of the jurors, said: "If we had voted according to our hearts the verdict might have been different."<sup>24</sup>

## II. LESSONS FROM ALICE AND LEONARD RHINELANDER

Although occurring almost a century ago, the lives of Alice and Leonard Rhinelander remain relevant in today's society. In addition to

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<sup>20</sup> *Rhinelander Dropped from Social Register*, DETROIT FREE PRESS, Nov. 25, 1925, at 2.

<sup>21</sup> *Kip Rhinelander Dies of Pneumonia*, ST. LOUIS DAILY GLOBE-DEMOCRAT, Feb. 21, 1936, at 2A; see also LEWIS & ARDIZZONE, *supra* note 10, at 247-48.

<sup>22</sup> LEWIS & ARDIZZONE, *supra* note 10, at 246. The present day value of Alice's lump sum payment was determined with the use of the "US Inflation Calculator" at <http://www.usinflationcalculator.com> (last visited on Feb. 13, 2013).

<sup>23</sup> LEWIS & ARDIZZONE, *supra* note 10, at 252, 259.

<sup>24</sup> See *supra* note 19 and accompanying text.

teaching us about the various struggles that can occur in defining one's own racial identity, especially for multiracial individuals like Alice (who some believe viewed herself as white), the *Rhinelander* narrative forecasts a strong lingering taboo against interracial marriage in general and black-white marriage in particular.

In a *California Law Review* article that I published in 2007, I explored some of the reasons why I believe that Alice was able to win at trial.<sup>25</sup> There, I contend that Alice was able to win at trial: (1) because the all-white, all-male jury needed to believe in race as a pure biological construct with distinct physical markers — they needed to believe that they would know “race” when they saw it; and (2) because Leonard failed to satisfy white society's expectations about how a white gentleman should act and because Alice, in many ways, met social stereotypes about black women's behavior, particularly the stereotype of hypersexuality. The focus in the heart of my book — Part II — is not on why and how Alice won. Instead, the second part of the project focuses on many important lessons regarding how law and society have often functioned together to frame the normative ideal of family as monoracial, both in our history and in our present, and on how interracial, heterosexual couples continue to face discrimination and microaggressions as a result. In this talk in particular, I address how, despite reports of widespread acceptance of interracial intimacy, individuals in the United States still largely experience intimacy through couples and families in separate racial corners, particularly when it comes to Blacks<sup>26</sup> and Whites.<sup>27</sup>

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<sup>25</sup> See generally Angela Onwuachi-Willig, *A Beautiful Lie: Exploring Rhinelander v. Rhinelander as a Formative Lesson on Race, Identity, Marriage, and Family*, 95 CALIF. L. REV. 2393 (2007) (arguing that the verdict was made possible by a strategic decision by Alice's attorney to not litigate her “whiteness” and by the jury's desire to punish Leonard for failing to meet racial expectations).

<sup>26</sup> Throughout this paper, I capitalize the word “Black” or “White” when I use them as nouns to describe a racialized group; however, I do not capitalize these terms when I use them as adjectives. Also, I prefer to use the term “Blacks” to the term “African Americans” because the term “Blacks” is more inclusive. Additionally, I find that “[i]t is more convenient to invoke the terminological differentiation between black and white than say, between African-American and Northern European-American, which would be necessary to maintain semantic symmetry between the two typologies.” Alex M. Johnson, Jr., *Defending the Use of Quotas in Affirmative Action: Attacking Racism in the Nineties*, 1992 U. ILL. L. REV. 1043, 1044 n.4 (1992). Professor Kimberlé Crenshaw, one of the founders of Critical Race Theory, has explained that “Black” deserves capitalization because “Blacks, like Asians [and] Latinos . . . constitute a specific cultural group and, as such, require denotation as a proper noun.” Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988) (citing Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda*

*A. Marriage in Black and White*

If the *Rhineland* trial teaches us anything, it is that black-white love is the greatest taboo of all interracial intimacies — that black-white marriages are the least normative of all (heterosexual) relationships. Alice's once-dear friend, Miriam Rich, declared as much during her trial testimony against Alice. According to Miriam Rich, after the story of Alice's race and marriage to Leonard became public, a distraught Alice promised to prove her whiteness, proclaiming that Leonard "would rather have married an Indian than he had married a negress."<sup>28</sup> In other words, anything would have been better for Leonard than marrying a black woman. When we look at the mere count of statutes in the United States that banned black-white marriages as compared to other types of interracial marriages, we can confirm as much.<sup>29</sup> The number of state statutes that prohibited marriages between Blacks and Whites far exceeded those that prohibited marriages between Whites and any other type of racial or ethnic minorities.<sup>30</sup> Of the thirty-eight states that, at one time or another, banned interracial marriage, all of them prohibited black-white marriage, but less than one-half — only fourteen of them — prohibited Asian-white marriage, and less than one-sixth — just seven of them — prohibited Native American-white marriage; none of them prohibited Latino or Hispanic-white marriage.<sup>31</sup>

Given this history of black-white relationships as compared to other interracial relationships, it should come as no surprise that Blacks remain uniquely isolated in terms of interracial marriage with Whites when compared to other racial and ethnic minority groups.<sup>32</sup> Recent

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for *Theory*, 7 *SIGNS* 515, 516 (1982)).

<sup>27</sup> See Suzanne C. Miller, Michael A. Olson & Russell H. Fazio, *Perceived Reactions to Interracial Romantic Relationships: When Race Is Used as a Cue to Status*, 7 *GROUP PROCESSES INTERGROUP REL.* 354, 355 (2004) (noting that "[i]n an era when many Americans denounce racial prejudice . . . [b]oth men and women report that race does make a difference in romantic relationships, and both groups show resistance toward dating someone of another race").

<sup>28</sup> Court Record, *supra* note 3, at 761-62 (direct examination of Miriam Rich).

<sup>29</sup> MORAN, *supra* note 5, at 17.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* Moran explains that the absence of statutes that banned Latino-white marriage was "presumably because treaty protections formally accorded former Spanish and Mexican citizens the status of white persons." *Id.* at 17.

<sup>32</sup> See generally Kennedy, *supra* note 5, at 818-20 (stating that "African Americans are substantially less likely to marry whites than are Hispanics, Asians, or native Americans[,] that the fact "[t]hat blacks intermarry with whites at strikingly lower rates than others is yet another sign of the uniquely encumbered and peculiarly isolated status of African Americans[,] and that such facts are "an impediment to the

statistics show that more than 93% of Blacks have same-race marriage partners, while only 70% of Asian Americans and Latinos and less than 33% of American Indians have same-race marital partners.<sup>33</sup> With the exception of Whites, Blacks are the least likely of any racial or ethnic group to marry across racial lines.

B. *The Jim and Jane Crow of Love*

Within the already comparatively low rates of outmarriage for Blacks, another significant disparity exists: the disparity between the outmarriage rates of black men and black women. Professor Ralph Richard Banks has highlighted in his book *Is Marriage for White People? How the African American Marriage Decline Affects Everyone* that black women are far less likely than black men to marry across racial lines.<sup>34</sup> In 2000, 9.7% of black men were married to Whites while only 4.1% of black women were,<sup>35</sup> and out of new marriages in 2008, 22% of all black male newlyweds outmarried as compared to just 9% of all black female newlyweds.<sup>36</sup> Overall, “[b]lack men outmarry 2.4 times more frequently than [b]lack women.”<sup>37</sup> So, even today, modern day Alices — meaning black women or biracial women with a black parent<sup>38</sup> — and modern-day Leonards — meaning white

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development of attitudes and connections that will be necessary to improve the position of black Americans and, beyond that, to address the racial divisions that continue to hobble our nation”).

<sup>33</sup> MORAN, *supra* note 5, at 6, 103; *see also* KENNEDY, *supra* note 5, at 127. The intermarriage rate for Blacks with Whites was approximately seven percent while the intermarriage rate for Japanese-Americans and Chinese-Americans with Whites was fifty-five and forty percent, respectively. Christine B. Hickman, *The Devil and the One Drop Rule: Racial Categories, African Americans, and the U.S. Census*, 95 MICH. L. REV. 1161, 1164 n.10 (1997); Kennedy, *supra* note 5, at 818.

<sup>34</sup> *See* RALPH RICHARD BANKS, *IS MARRIAGE FOR WHITE PEOPLE? HOW THE AFRICAN AMERICAN MARRIAGE DECLINE AFFECTS EVERYONE* 33, 33-38 (2011) (“Black men are between two and three times as likely as black women to marry someone of a different race. Estimates are that more than one out of five black men marry interracially, whereas fewer than one out of ten black women do.”).

<sup>35</sup> Kevin D. Brown and Vinay Sitapati, *Lessons Learned from Comparing the Application of Constitutional Law and Federal Anti-Discrimination Law to African-Americans in the U.S. and Dalits in India in the Context of Higher Education*, 24 HARV. BLACKLETTER L.J. 3, 40 (2008).

<sup>36</sup> JEFFREY S. PASSEL ET AL., PEW RESEARCH CTR., *A SOCIAL AND DEMOGRAPHIC TRENDS REPORT, MARRYING OUT: ONE-IN-SEVEN NEW U.S. MARRIAGES IS INTERRACIAL OR INTERETHNIC 2* (June 15, 2010), *available at* <http://pewsocialtrends.org/files/2010/10/755-marrying-out.pdf> (last visited Oct. 10, 2012).

<sup>37</sup> R. Richard Banks & Su Jin Gatlin, *African American Intimacy: The Racial Gap in Marriage*, 11 MICH. J. RACE & L. 115, 131 (2005); *see also* BANKS, *supra* note 34, at 33-38.

<sup>38</sup> I acknowledge that Alice may not have identified as a black woman.

men — are unlikely to become intimate partners, and more so, marital partners.

If one were to look at current dating statistics to determine what the outlook of black female-white male outmarriage may be in the future, that picture, too, would not signal an increase in numbers. For instance, in their book *Freakonomics: A Rogue Economist Explores the Hidden Side of Everything*, authors Steven Levitt and Stephen Dubner describe how white daters' stated openness to interracial dating does not tend to match their actual practices in dating. Specifically, pulling from statistics in a study entitled "What Makes You Click: An Empirical Analysis of Online Dating," Levitt and Duber report that, although approximately 50% of white women and 80% of white men indicated that race did not matter to them in their dating profiles, those same white men actually sent 90% of their e-mail queries to white women, and those same white women sent approximately 97% of their email queries to white men.<sup>39</sup> Additionally, despite white daters' expressed openness to cross-racial intimacy, their actual behaviors indicate that the black female-white male color and gender line is often too much for them to cross. For example, in 2009, professors from the University of California, Irvine published the results of their study involving the gendered and race-based exclusions of white, heterosexual internet daters who articulated their racial preferences in their website profiles, a study that suggests that the number of black-white relationships of any kind will remain low for years to come.<sup>40</sup> Among the small group of Whites who were willing to openly express their racial preferences in mates, black women ranked the lowest among women of all races and ethnicities as desirable partners.<sup>41</sup> Overall, the researchers found that white men express a racial preference for dating only white women much less frequently than white women expressed a similar preference for dating only white men, with only 29% of white men indicating a Whites-only preference and 64% of white women doing so.<sup>42</sup> In fact, "white women [were] 1.8 times as likely to state a racial preference as white men."<sup>43</sup>

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<sup>39</sup> STEVEN D. LEVITT AND STEPHEN J. DUBNER, *FREAKONOMICS: A ROGUE ECONOMIST EXPLORES THE HIDDEN SIDE OF EVERYTHING* 81 (2009) (analyzing "What Makes You Click: An Empirical Analysis of Online Dating" by Dan Ariely, Günter J. Hitsch, and Ali Hortaçsu).

<sup>40</sup> Cynthia Feliciano, Belinda Robnett & Golnaz Komaie, *Gendered Racial Exclusion Among White Internet Daters*, 38 SOC. SCI. RES. 39 (2009).

<sup>41</sup> *Id.* at 46.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 47.

The Irvine researchers further found that white men who articulated racial preferences (59%) included a greater number of different racial and ethnic groups of women at an average of 3.42 than white women who provided their racial preferences (72%), who included on average 1.84 different racial and ethnic groups.<sup>44</sup> Finally, the researchers also found that, while over 90 percent of white women who articulated racial preferences and exclusions preferred not to date men from four groups — East Indians, Middle Easterners, Asians, and Blacks — “[w]hite men with stated racial preferences, in contrast, only prefer[red] not to date one group at levels above 90%: black women.”<sup>45</sup>

Also, in 2009, the dating website OkCupid released statistics about its customers’ preferences that revealed Blacks, and in particular, black women, to be the least desirable partners, not among just heterosexuals, but also among gays and lesbians.<sup>46</sup> For example, in its study, OkCupid examined the first-contact attempts and response rates for its heterosexual customers based on race, and found that the sender’s race played a significant role in whether he or she ever received a response back from those contacted. Specifically, OkCupid reviewed the actions and behaviors of its Asian, black, Latino, Indian, Middle Eastern, Native American, Pacific Islander, and white customers of both sexes.<sup>47</sup> OkCupid found that, while black, heterosexual women were the most likely of any group of heterosexuals to reply when contacted — at 1.5 times the average response rate, they received, by far, the fewest replies.<sup>48</sup> As the website explained, “Men don’t write black women back. Or rather, they write them back far less often than they should. Black women reply the most, yet get by far the fewest replies. Essentially every race — *including other blacks* — singles them out for the cold shoulder.”<sup>49</sup>

### C. Why Aren’t There More “Alices and Leonards”?

Still, none of these studies explain exactly why there are not more Alices and Leonards in today’s society. In the post-Loving era, one

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<sup>44</sup> *Id.* at 45.

<sup>45</sup> *Id.* at 46.

<sup>46</sup> Christian Rudder, *How Your Race Affects the Messages You Get*, OKTRENDS (Oct. 5, 2009), [blog.okcupid.com/index.php.your-race-affects-whether-people-write-you-back/](http://blog.okcupid.com/index.php.your-race-affects-whether-people-write-you-back/); *Same-Sex Data for Race vs. Reply Rates*, OKTRENDS (Oct. 2009), <http://blog.okcupid.com/index.php/same-sex>.

<sup>47</sup> Rudder, *supra* note 46.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

must ask why couples like Alice and Leonard — married black female-white male couples — remain the least common of all minority outmarriages and commitments with Whites? In particular, why do such couples remain so far behind black male-white female marriages, which actually have a history of eliciting much harsher and more volatile reactions from society? Why do they remain the farthest from the normative ideal for families?

In fact, unlike for white men and black women, interracial sex between black men and white women has always been considered to be taboo. Historically speaking, black men and white women who entered into intimate relationships with each other received severe punishment for their transgressions.<sup>50</sup> For example, during slavery, white women who engaged in relationships with black men could lose their very freedom, being forced into indentured servitude.<sup>51</sup> As one example of more recent regulation of interracial intimacy, Dean Kevin Johnson highlighted the way in which a corrupt, undercover police officer framed about 20% of the African American adults in Tulia, Texas, for drug crimes, in part because they were black men who either were or had been in interracial relationships with white women.<sup>52</sup>

Today, black male-white female couples are still more likely to experience resistance to their relationships than black female-white male couples.<sup>53</sup> Studies show that white women continue to report more disapproval from family members than their white male counterparts for entering interracial unions.<sup>54</sup> For example, researchers Suzanne Collins, Michael Olson, and Russell Fazio found that “[w]hite women appear to receive more pressure to date and marry White men than White men receive to date and marry White

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<sup>50</sup> See *supra* note 7 and accompanying text.

<sup>51</sup> RENEE C. ROMANO, RACE MIXING, BLACK-WHITE MARRIAGE IN POSTWAR AMERICA 218 (2003).

<sup>52</sup> Kevin R. Johnson, *Taking the “Garbage” Out in Tulia, Texas: The Taboo on Black-White Romance and Racial Profiling in the “War on Drugs,”* 2007 WIS. L. REV. 283, 293-306 (2007).

<sup>53</sup> Miller, Olson & Fazio, *supra* note 27, at 355, 357-66 (contending that the greater hostility felt by black men and white women in couples can be explained by parental investment theory and social structural theory). Based on their studies, the authors asserted that “according to non-White males involved with White females, the parents of White females were more disapproving of their daughters dating non-White males than were the parents of any other combination of race and sex.” *Id.* at 360, 365. They further noted, “[I]n fact, they were the only group for whom there was perceived to be more disapproval from their partner’s family and friends compared to their own.” *Id.* at 362.

<sup>54</sup> See Feliciano, Robnett & Komaie, *supra* note 40, at 41.

women.”<sup>55</sup> They further concluded that the fact that “this pattern held [for Whites who reported relatively more parental prejudice] regardless of the particular racial group in question . . . provides strong evidence that being non-White does in fact act as a heuristic cue to lower status to some Whites.”<sup>56</sup>

Outside of the family, black male-white female couples may also face more hostility from others than do black female-white male couples. In some instances, “[t]he most vocal opposition comes from black women . . . .”<sup>57</sup> Consider, for one moment, the difference in the responses to two, separate magazine covers from *Essence* magazine, a popular magazine that focuses on the concerns and issues of black women.

The first cover appeared in *Essence* in February of 2010 and featured New Orleans Saints running back, Reggie Bush, while the second cover appeared in April of 2010 and featured *Avatar* actress Zoe Saldana. At the time, both Bush and Saldana were involved in serious romantic relationships with Whites. Bush was involved with reality star Kim Kardashian, who is a white ethnic (half Armenian), and Saldana was involved with her then boyfriend of a decade, actor Keith Britton. Yet, only Bush’s cover ignited a firestorm among *Essence* readers, and it did so precisely because he was dating a white woman at the time. In the March issue that followed Bush’s cover, numerous readers published letters that criticized *Essence*’s selection of Bush for a cover. For example, one woman from New Orleans, Louisiana, remarked: “*Essence* was created to embrace and empower African-Americans, particularly our women. Reggie Bush’s current girlfriend, Kim Kardashian, is a clear indication that African-American women could not ‘live (their) fantasy’ with him.”<sup>58</sup>

On the flip side, even though Saldana’s article was the only one of the two to mention a romantic partner, the response from readers to Saldana’s cover was entirely positive. In fact, the following May issue of *Essence* contained no letters in response to Saldana at all, though it still included letters regarding the selection of Bush for the February cover. It was not until the next month’s issue in June that two readers finally published letters that praised the very talented actress, with one even noting how Saldana was inspiring because of her attractiveness to black men.

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<sup>55</sup> Miller, Olson & Fazio, *supra* note 27, at 365.

<sup>56</sup> *Id.*

<sup>57</sup> ROMANO, *supra* note 51, at 259.

<sup>58</sup> *Your Letters*, ESSENCE, March 2010, at 15.



One response came from Christina Jackson of Seattle, Washington, who said:

I loved your April 2010 cover with Zoe Saldana. And what I love more is that she is a naturally superskinny girl like me. I do consider myself attractive, but because I don't have that bada-bing-bada-boom body I don't think I'm considered beautiful in our community. But to have Zoe come along and have so much success and even have Black men checking for her is such an inspiration!<sup>59</sup>

The reasons for such differing reactions to black male-white female and black female-white male relationships in *Essence*, and more generally in our society, could be many. For example, one black woman whom I interviewed for my book explained that her parents were not “troubled” by her interracial marriage because they “knew that it would be harder for [her] as a black woman to find a black man to date and marry.”<sup>60</sup> Moreover, reading the second reader Christina Jackson’s quote about Saldana closely, one could even extract another reason why a black woman’s relationship with a white man — here, Saldana’s — would not be as troubling for *Essence* readers: that Saldana does not have that “bada-bing-bada-boom body” that black men love. Here, again, the black woman has received a pass where the black man does not. After all, couldn’t the same rationale apply to Bush’s relationship with Kardashian, who is specifically known for having a “bada-bing-bada-boom body”?

But, the question remains: Why, when there seems to be greater punishment for and social animosity towards black male-white female intimate partnerships, do black male-white female marriages consistently and significantly outnumber black female-white male marriages? Here, too, the lives of Alice and Leonard Rhinelander may prove to be instructive. The couple’s experiences teach us not only how law and society have worked together to frame the normative ideal of family as monoracial but also as heterosexual, and in a way that defines black female-white male intimacy as the least normative of all intimacies. As I noted earlier in my previous essay on the *Rhineland* case, one of the possible reasons why the jury was able to rule for Alice, and against Leonard, was because Alice acted according to the racial stereotype of the Jezebel and vamp, while Leonard

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<sup>59</sup> *Your Letters*, ESSENCE, June 2010, at 25.

<sup>60</sup> ONWUACHI-WILLIG, ACCORDING TO OUR HEARTS, *supra* note 11 (first pageproofs at 143).

purportedly acted against racial, class, and gender stereotypes.<sup>61</sup> Indeed, Leonard's attorney, Mills, worked hard to portray Leonard as a dim-witted and weak-willed youngster and Alice as a black female aggressor who seduced and lured Leonard into sexual relations and forced him to follow her plan of marriage.<sup>62</sup> But as much as that image of Alice as the vamp or Jezebel may have worked to help her defeat Leonard's claim for annulment, it also worked to push her and Leonard's relationship further outside of the normative ideal for couples in our society — here, across gender lines. Regardless of whether such a framing is actually desirable, the ideal couple in our society, especially during the 1920s, is framed as being gendered “feminine” and “masculine.” Labeled as the sexual aggressor and dominant one in her relationship with Leonard, Alice was, like so many black women, deemed to be the masculine one, subverting not only the roles of race by making Leonard her “love slave” but also subverting the roles of man and woman.<sup>63</sup> Such stereotypes of black women continue with similar force today, revealing themselves in media images of racialized welfare mothers and domineering matriarchs.<sup>64</sup>

One more reason why Alices and Leonards are so much more unlikely to exist than other married interracial couples is the loss of race and gender privilege that often comes to people, especially to white men, after interracial marriage. These factors must play a role, whether consciously or unconsciously, in any individual decisions about marriage. As Professor Renee Romano has explained, historically speaking, it was the white partner in a black-white marriage who assimilated into the black community, which often meant living in black neighborhoods, attending black churches, sending children to black schools, and reinforcing the one-drop rule by raising biracial children with only a black identity.<sup>65</sup> Although, in some instances with black female-white male couples, it was the black

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<sup>61</sup> See Onwuachi-Willig, *supra* note 25, at 2416, 2449-51.

<sup>62</sup> *Id.* at 2412-14, 2419-22, 2436-38.

<sup>63</sup> *Id.* at 2412-14.

<sup>64</sup> For analyses of such stereotypes, see Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform's Marriage Cure as the Revival of Post-Bellum Control*, 93 CALIF. L. REV. 1647, 1670-73 (2005); Tonya L. Brito, *From Madonna to Proletariat: Constructing a New Ideology of Motherhood in Welfare Discourse*, 44 VILLANOVA L. REV. 415, 434-35 (1999); Zanita E. Fenton, *Domestic Violence in Black And White: Racialized Gender Stereotypes in Gender Violence*, 8 COLUM. J. GENDER & L. 1, 23-25 & n. 87 (1998); Lisa Crooms, *Don't Believe the Hype: Black Women, Patriarchy, and the New Welfarism*, 38 HOW. L.J. 611, 612-13 (1995).

<sup>65</sup> ROMANO, *supra* note 51, at 133-34.

women who assimilated into the white community, the white men in those relationships were generally unable to maintain their full status and privileges at all levels. Again, consider the case of Leonard Kip Rhineland. Although Leonard came from one of the most powerful families in New York and possessed \$280,000.00 on his own in 1924 — the equivalent of \$3,709,508.77 in 2011 — even he, with all of his wealth, could not freely live anywhere he wanted to in New York once he married Alice. Instead, he lived in a room in the modest home of George and Elizabeth Jones and then later, for a brief time, with Alice in a modest apartment in New Rochelle, New York. Leonard was then cut off and isolated from most of his family and family connections for a number of years and then died at the very young age of thirty-four. While today, marrying interracially would not necessarily result in a similar loss of status and privilege, there are many privileges that are automatically lost for all individuals in black-white couples in a society where laws and rules presume monoraciality among families.

*D. Race As an Acceptable Basis for Annulment Today?*

Overall, one must wonder to what extent a broad cross-section of our nation's citizens today, especially white citizens, view knowledge of racial background — specifically blackness — as a factor that goes to the essence of marriage. In other words, could a litigant today successfully identify racial fraud as a factor that goes to the essence of marriage in an annulment case? Courts have held that the concealment of matters such as “incontinence, temper, idleness, extravagance, coldness or fortune” cannot serve as the basis for an annulment.<sup>66</sup> Likewise, courts have held that a misrepresentation about financial means or social position does not go to the essence of marriage.<sup>67</sup> Rather, the misrepresentation must be so material and important that it essentially destroys the marital agreement.<sup>68</sup>

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<sup>66</sup> *In re Marriage of Johnston*, 18 Cal. App. 4th 499, 501 (1993); *see also* V.J.S. v. M.J.B., 592 A.2d 318, 320 (N.J. Super. Ct. Ch. Div. 1991); *Di Pillo v. Di Pillo*, 184 N.Y.S.2d 892, 894 (N.Y. Sup. Ct. 1959); *see also* Kerry Abrams, *Marriage Fraud*, 100 CALIF. L. REV. 1, 8 (2010) (noting, for example, that “fraud that goes to the ‘essentials’ [if it] involves misstatements or omissions about one party’s ability or willingness to engage in sexual intercourse, and, specifically, sexual intercourse leading to procreation” but that “[f]raudulent misrepresentations . . . as to birth, social position, fortune, good health, and temperament, cannot . . . vitiate [a marriage] contract”).

<sup>67</sup> *See, e.g.,* *Marshall v. Marshall*, 212 Cal. 736, 737-38 (1931); *see also* *Williams v. Williams*, 118 Atl. 638, 639 (Del. Sup. Ct. 1922) (noting that misrepresentations as to wealth or social position do not go to the essence of a marriage). In this sense, had Leonard alleged that Alice had lied about her social position as opposed to her race —

But what would the answer to this dilemma be regarding representations of racial background after *Loving v. Virginia*? The fact that *Loving* forever changed family law, and thus families, by striking down all anti-miscegenation statutes does not in itself resolve this legal question about race and annulment. After all, even in *Rhinelanders*, where New York did not ban interracial marriages between Blacks and Whites, knowledge of a spouse's race was, without question, viewed as satisfying the lower standard of being material to decisions about marriage.

The short answer to my question is that knowledge of a spouse's race today is unlikely to provide a sufficiently legal basis for an annulment. The longer answer, however, reveals a much more complex response that leans toward yes.

Looking first at the short answer of no, courts are unlikely to find lack of knowledge about a partner's race to be a sufficient basis for annulment for a number of reasons including: (1) the fact that annulments do not serve the same purpose today as they did during the 1920s; and (2) the fact that Supreme Court case law suggests that decisions of family law cannot be made based on such prejudices. The fact is that it would be difficult to grant an annulment based on what could be viewed solely as race prejudice in light of cases like *Palmore v. Sidoti*, where the Supreme Court held that racial prejudice cannot serve as the determinative basis for making child custody decisions between parents.<sup>69</sup>

While granting an annulment based on racial fraud in a post-*Loving* world does not, at first glance, seem to be likely, it is hard to imagine, given the current state of race relations, that some judges would not be sympathetic to an argument from a man or woman who had been deceived about the race of his or her spouse. In this sense, 1920s New York, where Alice and Leonard were socially, not legally, forbidden

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a factor that also was reported to be objectionable to his father, Philip Rhinelanders — that claim likely would not have survived because such misrepresentations could have been determined to be outside of the “essence of marriage” or more specific to this case, as not a material factor in deciding whether to marry.

<sup>68</sup> See, e.g., *People v. Godines*, 62 P.2d 787 (Cal. Dist. Ct. App. 1936) (“In view of the declared policy of this state that a white person and a Filipino may not marry, it seems clear that a misrepresentation by a Filipino that he is a Spaniard is a fraud that touches a vital spot in the marriage relation and constitutes, therefore, a cause for annulment.”). Notably and importantly, fraud as to a spouse's fanatic racism or prejudice has been held to go to the essence of marriage. See *Kober v. Kober*, 211 N.E.2d 817, 820-21 (N.Y. 1965) (granting an annulment where the husband had concealed that he was fanatically anti-Semitic).

<sup>69</sup> *Palmore v. Sidoti*, 466 U.S. 429, 431-33 (1984).

from remaining together as husband and wife, is not so different from today's society. Our entire practice of regulating intimate relationships reveals that our society fervently protects people's preferences to "discriminate" on the basis of race in terms of the people with whom they form intimate and familial relationships. As Professor Rachel Moran has highlighted: "[W]hen 95 percent of all marriages in America take place between people of the same race, race shapes marital choice; but, just as importantly, marriage shapes racial identity. . . . The freedom to select our intimates is also the power to define racial difference."<sup>70</sup>

Even in the face of decisions such as *Loving* and *Palmore*, the law continues to facilitate the use of race as a determinative factor in the construction of families by individuals. For instance, Professor Ralph Richard Banks has explained how society has continued to allow explicit state facilitation of the use of race in parental selection of children for adoption by not discouraging parents' racial preferences when adopting.<sup>71</sup> Moreover, as Professor Solangel Maldonado has explained, although the law no longer allows race to be used as the reason to deny or delay placement of a child for domestic adoption or foster care, it participates in discrimination by facilitating the decisions of many white adoptive families who may be choosing to adopt European and Asian children from abroad instead of black and brown children in the United States based upon unconscious as well as conscious racial preferences.<sup>72</sup>

In sum, the ways in which we protect potential race discrimination along lines of intimacy and have used law as a tool to regulate race and adoption in the family hint at the continuing prominence of race as an "essential" of marriage, or more broadly speaking, of family today, even if courts will not explicitly recognize it as "essential" in an annulment case. In a society that views children as central to marriage, it is difficult to imagine that some courts would not sympathize with arguments concerning whether the suing partner willingly chose to have racially mixed children. Indeed, we know of at least one former judge who has expressed sentiments against interracial couples because of his concerns about biracial children. In 2009, Keith

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<sup>70</sup> MORAN, *supra* note 5, at 191; see also Russell K. Robinson, *Structural Dimensions of Romantic Preferences*, 76 *FORDHAM L. REV.* 2787, 2803 (2008) (noting "race structures our relationships, even when we think we have transcended it").

<sup>71</sup> See R. Richard Banks, *The Color of Desire: Fulfilling Adoptive Parents' Racial Preferences Through Discriminatory State Action*, 107 *YALE L.J.* 875, 881-914 (1998).

<sup>72</sup> Solangel Maldonado, *Discouraging Racial Preferences in Adoptions*, 39 *UC DAVIS L. REV.* 1415, 1457-62 (2006).

Bardwell, then a judge in Tangipahoa Parish, Louisiana, refused to marry an interracial couple — a thirty-two year old black man, Terence McKay, and his thirty-year old, white female partner, Beth Humphrey — because Bardwell feared for their multiracial children. Bardwell argued that biracial children would not be accepted by either Whites or Blacks. He further asserted, “I don’t do interracial marriages because I don’t want to put children in a situation they didn’t bring on themselves. . . . In my heart, I feel the children will later suffer.”<sup>73</sup> In an effort to explain his actions more, Bardwell stated that, in his experience, interracial marriages do not last long.

Lest one think that Bardwell was just one rogue judge who ignored the law (thus making his actions meaningless in terms of the lessons they impart about societal norms on race and family), consider the fact that many of Bardwell’s judicial colleagues likely knew what he was doing in refusing to marry interracial couples and not only never reported him, but in fact accepted his referrals of interracial couples to marry. (Note that Bardwell freely admitted his discrimination to pure strangers all over the world through the media.)<sup>74</sup> It may have been that Bardwell’s colleagues saw his views about interracial couples in the way that so many individuals see questions of intimacy among lovers and families — to be mere personal and natural preference, not racism. Indeed, Bardwell himself explained his beliefs in this way, asserting: “I’m not a racist. I just don’t believe in mixing the races that way. . . . I have piles and piles of black friends. They come to my home, I marry them, they use my bathroom. I treat them just like everyone else.”<sup>75</sup>

But, it is exactly this failure to examine our perception of these intimate matters as private decisions that deserve both social and legal protection that works to perpetuate the framing of the monoracial family as the normative ideal, an ideal that comes with a plethora of social privileges and benefits and that too often results in disadvantage for multiracial families. Luckily, Bardwell, with the blatant racism of his actions and words, made it easier for so many people to see the

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<sup>73</sup> *Interracial Couple Denied Marriage License in La.*, BREITBART (Oct. 15, 2009), <http://www.breitbart.com/article.php?id=D9BBNUJ80>.

<sup>74</sup> Melinda DeSlatte, *Keith Bardwell Quits: Justice Of The Peace Who Refused To Give Interracial Couple Marriage License Resigns*, HUFFINGTON POST (Nov. 3, 2009, 9:48 PM), [http://www.huffingtonpost.com/2009/11/03/keith-bardwell-quits-just\\_n\\_344427.html](http://www.huffingtonpost.com/2009/11/03/keith-bardwell-quits-just_n_344427.html) (“In interviews, he said he refers the couples to other justices of the peace, who then perform the ceremony, which happened in this case.”).

<sup>75</sup> *Judge Crawls Out Medieval Times, Denies Marriage License to Mixed Race Couple*, THE ROOT.COM (Oct. 16, 2009, 8:12 AM), <http://www.theroot.com/buzz/judge-crawls-out-medieval-times-denies-marriage-license-mixed-race-couple>.

connections between these “private” decisions and the social and legal cues and norms that work to perpetuate racial hierarchies, both among individuals and families. Bardwell made us all ask ourselves: Who comes to our homes? Whom do we marry or see as marriageable? Or even, shamefully, whom do we allow to use our bathrooms? And finally, do our current actions in love and finding love, whether conscious or unconscious, fall in line with what we believe to be according to our hearts?